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AND THE TRUTH SHALL SET YOU FREE. TRUTH COMMISSIONS AND CIVIL-MILITARY RELATIONS

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For societies suffering in the wake of a repressive regime, truth commissions may be a necessary compromise regarding the form of transitional justice pursued, but they can still play a far-reaching role in the democratization of civil-military relations. Because the perpetrators of past abuses are likely to continue to wield some level of power at the time of transition, prosecution of these members may be politically infeasible. Lacking the mandate to prosecute guilty parties or implement recommendations, truth commissions can still lay the foundation for a new era of civil-military relations. By distinguishing contemporary institutions from their past acts, revealing the patterns that allowed abuses to be carried out, and helping garner the political will for reforms, truth commissions can provide the impetus for the security sector reforms necessary to ensure a democratic future.

Key words: truth commissions, democratization, Civil-Military relations, transitional justice.

1. INTRODUCTION

By providing an officially sanctioned means of confronting a nation's violent past, truth commissions can help societies move forward, out of the shadow of brutality and authoritarianism. One potential aim for truth commissions is bridging the gap in civil-military relations. By holding accountable those who perpetrated past abuses, truth commissions enable societies to distinguish reformed security forces from the institutions that carried out past abuses, helping restore society's trust. Moreover, by bringing to light the structures that allowed past abuses to be carried out, the findings of truth commissions can provide the impetus for institutional reforms. Even though truth commissions typically lack the mandate to enforce their recommendations, their findings can help garner the political will to carry out reforms.

Still, truth commissions are only one of many possibilities for dealing with past atrocities, and their limitations must be acknowledged. The pursuit of transitional justice can have the counter-productive effect of making persisting divisions in society more poignant. Investigating past abuses

is likely to be met with resistance by those responsible for these acts. If the potential of prosecution exacerbates the division in society between armed forces and the population at large, then the pursuit of justice can be an impediment to further democratization or can put up obstacles to creating an effective defense force.

In this regard, truth commissions that lack the mandate for prosecution can be a necessary compromise, even if they fall far short of affecting the justice needed for reconciliation. Truth commissions have the potential of helping democratize civil-military relations, but it must be accepted that they are inherently an imperfect form of transitional justice that can nonetheless provide an important foundation for democratic reforms.

2. A LIMITED MANDATE WITH PERVASIVE EFFECTS

No two truth commissions are the same. Commissions are a product of the societies that decide to go through with them and the past crimes that necessitate their undertaking. There have been over 40 truth commissions to date, with the majority of these coming in the twenty-first century and the most

recent commission, Brazil's, released on December 10, 2014.

It is important to delineate these types of proceedings from other judicial proceedings. Priscilla B. Hayner's definition of a truth commission will be used for the purpose of this article. She argues that a truth commission must meet five basic parameters to distinguish itself from other judicial proceedings:

"A truth commission is (1) focused on the past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected populations, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state for review". [1]

Tellingly, this definition lacks any specific mention of security forces or civil-military relations. Even though truth commissions typically investigate the security institutions that perpetrated abuses, they are not specifically directed at ensuring any type of security sector reform. They will usually have a more limited mandate. However, by serving other purposes, these proceedings can influence civil-military relations.

Primarily, it is the focus on a pattern of events that is pertinent to civil-military relations. A pattern implies a relationship, and, in the case of truth commissions that come in the wake of a repressive regime, one of the key relationships that affect civil-military relations will be the relationship between the past government and the armed forces. It is this relationship that a new era of civil-military relations must be built upon. Revealing the intricacies of this past relationship that enabled abuses is a necessary step for ensuring the correct reforms are undertaken.

Since these types of investigations are more aimed at fact-gathering, they tend to have more limited authorities than formal legal institutions and usually lack the authority to ensure the implementation of their recommendations or prosecute wrongdoers [2]. Although these limited authorities open truth commissions up to

criticism, these same aspects also offer advantages over formal trials:

"One might think that this inability to punish would make commissions extremely unpopular. In fact, it has done just the opposite. After all, trials, the standard mechanism for arranging punishment, are a far from perfect way to establish transitional justice. The upper levels of the outgoing regime often demand immunity from prosecution as part of the transition deal. And even after repressive governments leave office, their civil servants—including judges, prosecutors, and police—usually remain in place. This makes practical sense, since new democracies cannot afford to purge all their experienced technocrats, but it inevitably results in less vigorous investigation and punishment of old crimes. Trials, moreover, with their high standard of proof and extensive evidentiary requirements, are complicated and expensive, and fledgling governments tend to be strapped for cash". [3]

Since truth commissions lack the authority to prosecute or directly implement reforms, they can be expected to be met with more limited resistance by those who are targeted by these types of proceedings.

Despite more restricted legal powers, truth commissions' broader mandate to identify the patterns and underlying causes that resulted in past abuses equips them to influence institutional reform. Commissions can focus on delineating state and institutional responsibility, rather than concentrating strictly on individual responsibility. It is this relationship to institutional responsibility and, in turn, institutional reforms that make truth commissions particularly relevant to the democratization of civil-military relations.

3. A NECESSARY COMPROMISE

Commonly, a nation's armed forces, or security forces in general, are the main perpetrators of the human rights abuses that a repressive regime relied upon to stay in power. During democratic transition, the new government's relationship with the military will be a vital part of its ability to achieve democratic consolidation, which puts

the newly formed, often struggling government in a precarious position. Its legitimacy may hinge on its ability to confront the state's past, bring to justice those who committed past abuses, and address the grievances of victims. At the same time, the government will also be working to implement effective civilian control over the armed forces.

The resistance of groups who were responsible for past abuses and their ability to continue to shape policy are two of the primary factors that determine a state's transitional policies. Other factors include the organization of civil society groups calling for transitional justice, the nature and extent of past abuses, and international pressure [1]. If the armed forces are resistant to any type of prosecution — as can be expected if high-ranking members were responsible for past abuses — undertaking a truth commission may be a necessary compromise in order to take a step in the direction of reforming the security forces without creating a level of resistance that would make democratic progress unlikely. Truth commissions are the most likely compromise for the form of transitional justice adopted when both the public demand for justice and the military's demand for impunity is strong [4].

If past abuses are left unaddressed, then the armed forces will continue to be equated with the institution that perpetrated these wrongdoings. This can severely limit the military's prestige. More importantly, a resistance to acknowledging past abuses is typically related to a resistance to future reforms [5]. If the government cannot bring the military under effective civilian control, then they may instead try to limit the effectiveness of the armed force, which is only a viable option if there is no poignant threat that must be defended against.

Thus, fledgling governments are faced with a serious challenge regarding civil-military relations and transitional justice. On one hand, if past abuses are left unaddressed, then the legitimacy of the new government will be in question and the armed forces will continue to be equated with the perpetrators of past abuses, severely affecting the society's

trust in the armed forces and willingness to grant the authorities necessary to carry out its responsibilities. On the other hand, if the government decides to go through with prosecution, then the government can expect to face significant resistance from military leaders, which can inhibit the implementation of other democratic reforms.

In the worst case scenario, the resistance of the military could be a destabilizing force for the new government. Under more benign conditions, the military's resistance can limit the mandate of the type of transitional justice pursued, making them non-attributional, or it can necessitate compromise in other dimensions of civil-military relations. Since truth commissions do not have the same authority as domestic prosecution, they can be a less destabilizing choice for transitional justice, especially when military resistance is high and the military still possesses significant political power [2].

Thus, truth commissions are typically a bargain between the public demand for justice and the entrenched interests of security forces, but they are a bargain that can nonetheless be an important first step in the direction of the democratization of civil-military relations. Although this is far from perfect justice, it reflects the challenges transitional governments face [3].

Even under a more limited mandate, truth commissions can provide an important foundation for security sector reforms. Simply put, societies may be compelled to trade justice for truth. Perpetrators of past abuses may not face justice, but the acknowledgement of past abuses and the illumination of the underlying structural arrangement that enabled these crimes can be more effective in the long-run at preventing future abuses than holding accountable individual wrongdoers. Moreover, commissions can later provide evidence to courts or catalyze public support that will eventually lead to prosecution.

4. ACCOUNTABILITY

Truth commissions can have a variety of aims: *“to discover, clarify, and formally acknowledge past abuses; to address the needs of victims; to “counter impunity” and advance individual accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past”* [1].

Although these goals are interrelated, the ones that apply most directly to civil-military relations are countering impunity, advancing accountability, outlining institutional responsibility, and recommending reforms to ensure that past abuses are not perpetuated. Countering impunity and advancing accountability both help restore the prestige of the armed forces by distinguishing individual perpetrators from the institutions themselves. Outlining institutional responsibility and recommending reforms are broader goals, which can provide the justification for reforms that place greater civilian control over the armed forces.

After a period of repression, society must once again learn to trust the security forces, many times the perpetrators of past abuses. If individuals within these institutions are not held accountable for past abuses, then the entire institution will continue to be equated with that of the past repressive regime.

Just like the dynamic nature of truth commissions themselves, different societies must determine what holding individuals to account means. An important decision regarding the commission's mandate will be whether or not to name names. For example, El Salvador's and South Africa's truth commissions named perpetrators; Guatemala's and Chile's did not [6].

Societies must also decide what to do with those connected with past abuses. In the case of Eastern Europe many states chose the broad and relatively indiscriminate strategy of “lustration”, where individuals were removed from public employment based strictly upon their prior political affiliation. Other states have attempted more specific

means of accountability, such as removing only those who were directly connected with a past record of human rights abuses [1]. Regardless of the advantages and disadvantages of the two approaches, this type of individual accountability allows societies to draw a clear distinguishing line between wrongdoers themselves and the institutions they were a part of.

Truth commissions should not only bring to light which individuals committed human rights abuses but how they were able to use their institutions to do so. Beyond individual accountability, there is institutional accountability, which must be clearly addressed before the institutions can be reformed. It is the focus on patterns, rather than individual wrongdoing, that make these proceedings particularly well-suited to identify the structural problems that enabled abuses and list the reforms needed to prevent the reoccurrence of human rights abuses [1].

Ensuring the prevention of future abuses is one of the primary goals of any type of transitional justice, and the reformation of security forces is inherent to this process. Truth commissions can prevent future abuses in a number of ways:

“Powered with the knowledge of past systematic abuses, civil society can work against the return of abusive regimes. Additionally, [commissions] guarantee that perpetrators know that if they violate human rights it can become public knowledge. Furthermore, if a process of truth-seeking is followed by reform of state institutions ensuring transparency and accountability of the security forces, it can minimize the chances of such abuses reoccurring within the institutional framework – therefore remembrance is vital”. [2]

Uncovering not only the individuals responsible for past abuses but also the conditions and relations between different institutions and civil society that enabled these abuses can lead to the necessary reforms that ensure these conditions are not perpetuated. The title of Argentina's truth commission report, *Nunca Mas* (Never Again), reflects this intention [6].

Many commissions have included recommendations specific to the armed forces. For example, the El Salvadoran

commission recommended purging the military, the South African and Guatemalan commissions recommended ensuring effective civilian control over the armed forces and a change in military doctrine, and the Chilean commission recommended redefining the roles of the military and intelligence services. [6]. Even if it is decided not to implement the recommendations of a truth commission, the identification of institutional responsibility can help garner the political will to push through necessary reforms later on.

5. WHERE THERE'S A WILL

While some truth commissions may have the underlying purpose of reforming institutions with records of abuses, most will have more specific aims, such as assisting victims' families in the grieving process by bringing closure to cases of missing victims [1]. Even in the cases of these more modest goals, truth commissions can help lay the foundation for more robust reforms by helping the transitional government win the public support needed for future reforms.

Many times, gaining the necessary political support will be the most difficult part of implementing reforms needed for the democratization of civil-military relations. A range of literature and experience demonstrates the structural reforms necessary for ensuring effective civilian control of the armed forces under a democratic government, from appointing a powerful civilian minister of defense to ensuring effective civilian budgetary control of armed forces to revamping military doctrine and professional education. Knowing what reforms are necessary is not as challenging as having the political will and capital to implement these reforms [7].

Elrin Mobekk refers to the way truth commissions can help garner the political will to push through reforms as a "mindset shift":

"A major problem in SSR [security sector reform] lies in the implementation of new laws, norms and values. It is therefore crucial to focus on the mindset shift. This is by far the most difficult task in any reform process. It is also what will

take the longest time – changing minds towards an acceptance that reform will leave all actors better off is not achieved overnight, nor can this be enforced from the outside. There is an often un-stated understanding that this is the goal of the reform processes... transitional justice can start the process of a mindset shift in a post-conflict society". [2]

The publicity of truth commissions, revelation of the graphic details of past abuses, and identification of the patterns and practices that allowed these abuses can all help garner popular support for those parties calling for reforms in civil-military relations and democratic transition in general. In particular, commissions can spark a public debate about the roles institutions played in enabling past abuses and how they can be reformed to prevent this in the future [5].

Thus, the effect of truth commissions on civil-military relations must be seen in their ability to make incremental progress, rather than their ability to solve a number of long-festering problems in one sweeping blow. This incremental approach reflects the process of democratic consolidation, which is almost always going to be one of prolonged change, rather than a quick transition [8].

6. A TIME FOR REFORM

The viability of an incremental approach also suggests the need for sequencing. The timing of the publication of a commission's findings and recommendations is critical to its ability to affect the democratization of civil-military relations. For maximum effect, the commission's recommendations should be published so that it along with security sector reforms already underway can reinforce each other. If the recommendations are published too early in the democratization process, then security forces will be able to block the implementation of the suggested reforms, while if the findings are published too late in the reform process, they will be unnecessary [2].

Although the recommendations of commissions can lead to reforms, reforms not implemented can have an adverse effect. Narcis Serra argues that a reform should not be announced if the

means do not exist to implement it [8]. Unfortunately, this will almost always be the case with truth commissions. The lack of a means for enforcing recommended reforms is typical of commissions. The greater strength of security forces versus the new regime that necessitated a commissions undertaking in the first place, as opposed to another form of transitional justice, can be used to block the implementation of recommended reforms. If these reforms are not implemented, then the result will likely be a pervasive disillusionment. These adverse effects must be accounted for and factored into the timing of the recommendations and they way they are crafted. It should not stand in the way of a commission's undertaking.

7. CONCLUSION

A number of conclusions can be drawn about truth commissions and civil-military relations. First, truth commissions serve a variety of purposes so they should not be seen strictly through the lens of civil-military relations. However, even if truth commissions are not directed at civil-military relations they can have indirect or secondary effects that influence security sector reform. Second, many times truth commissions can have a broader impact than their specified aims. Even if a truth commission does not accomplish the broader goal of institutional reform, its success in accomplishing other, more modest goals can lay the foundation for future progress. For example, fact-finding truth commissions specifically aimed at addressing the needs of victims can help develop the necessary evidence to be used if amnesty is eventually overturned or can provide the impetus for more robust changes later down the road.

Finally, the effect of truth commissions on civil-military relations must be seen within the tumultuous process of democratization, not through the lens of a consolidated democracy. Commissions are not an alternative to more direct forms of prosecution and should not be perceived as such. When

impunity is granted as a prerequisite to commissions, sacrificing justice for truth invites a lot of criticism, and this should not be necessary under a consolidated democracy. However, during the process of democratization, many competing interests must be reconciled as the country continues to slowly work towards democratic consolidation. Establishing individual and institutional accountability, even under a non-attributional mandate, can be a necessary and significant step towards implementing the reforms that will help ensure a democratic security force.

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